

PROVIDING FOR A GAO STUDY ON CONDITIONS OF DIS-
PLACED SALVADORANS AND NICARAGUANS, AND FOR
OTHER PURPOSES

FEBRUARY 1 (legislative day, JANUARY 23), 1990.—Ordered to be printed

Mr. BIDEN, from the Committee on the Judiciary,
submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 458, as amended]

The Committee on the Judiciary, to which was referred the bill (S. 458) to provide for a General Accounting Office investigation and report on conditions of displaced Salvadorans and Nicaraguans, to provide certain rules of the House of Representatives and of the Senate with respect to review of the report, and to provide for the temporary stay of detention and deportation of certain Salvadorans and Nicaraguans, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

TITLE I—GENERAL ACCOUNTING OFFICE INVESTIGATION AND REPORT INVESTIGATION

SEC. 101. (a) **REQUIRING GAO INVESTIGATION ON DISPLACED SALVADORANS AND NICARAGUANS.**—Within sixty days after the date of the enactment of this Act, the Comptroller General of the United States shall begin an investigation concerning displaced nationals of El Salvador and Nicaragua.

(b) **DETERMINATIONS ON DISPLACED SALVADORANS AND NICARAGUANS IN CENTRAL AMERICA.**—The investigation shall determine the following with respect to displaced Salvadorans and displaced Nicaraguans who are present in either El Salvador, Honduras, Guatemala, Mexico, or Nicaragua, regardless of whether or not they are registered:

- (1) The number of these displaced persons and their current locations.
- (2) Their place of origin in El Salvador or Nicaragua (as the case may be) and the period of, and reason for, their displacement.
- (3) Their current living conditions, with particular attention to (A) their personal safety and the personal safety of those providing assistance to them, and (B) the availability of food and medical assistance.

(c) **DETERMINATIONS ON CONDITIONS IN EL SALVADOR THAT COULD AFFECT SALVADORANS WHO HAVE RETURNED FROM THE UNITED STATES.**—The investigation shall—

- (1) assess the general conditions and circumstances in El Salvador that may affect returned nationals, with particular attention to determining the reliability and use of (A) reports of any violations of fundamental human rights, and (B) reports concerning the status of Salvadorans who have returned from the United States; and
- (2) make recommendations for improvements in the type of information provided by such reports.

(d) **DETERMINATIONS OF SALVADORANS SEEKING REFUGE IN OTHER COUNTRIES.**—The investigation shall describe the policies of all other countries in which Salvadorans have sought refuge as these policies concern the return of the Salvadorans to El Salvador.

REPORT

SEC. 102. The Comptroller General of the United States shall submit to the Speaker of the House of Representatives and the President of the Senate, not later than one year after the date of the initiation of the study under section 101, a report on that study, including detailed findings on the items described in subsections (b), (c), and (d) of that section.

TITLE II—CONGRESSIONAL REVIEW

REFERRAL OF REPORT, COMMITTEE HEARINGS, AND COMMITTEE REPORT

SEC. 201. (a) **REFERRAL.**—The report, when submitted under section 102, shall be referred, in accordance with the rules of each House, to the standing committee or committees of each House of Congress having jurisdiction over the subjects of the report, and the report shall be printed as a document of the House of Representatives.

(b) **COMMITTEE HEARINGS.**—No later than ninety days of continuous session of Congress after the date of the referral of the report to a committee, the committee shall initiate hearings, insofar as such committee has legislative or oversight jurisdiction, to consider—

- (1) the findings of the report,
- (2) the appropriate steps that should be taken to provide assurances of personal safety and adequate, efficient, and equitable distribution of assistance with respect to Salvadorans or Nicaraguans who are displaced within El Salvador or Nicaragua (as the case may be) or who have fled to other countries in Central America,
- (3) treaty obligations of the United States, humanitarian considerations, and previous practice of the United States respecting the treatment of aliens in similar circumstances, and
- (4) whether it is appropriate to extend, remove, or alter the restrictions contained in title III.

(c) **COMMITTEE REPORT.**—Not later than two hundred and seventy days of continuous session of the Congress after the date of the referral of the report to a committee, the committee shall report to its respective House its oversight findings and any legislation it deems appropriate.

(d) **TREATMENT OF CONTINUITY OF SESSION.**—For purposes of this Act, continuity of session of Congress is broken only by an adjournment sine die at the end of the second regular session of a Congress, and days on which either House of Congress is not in session because of an adjournment of more than ten days to a date certain are excluded from the computation of the periods of continuous session of Congress.

TITLE III—TEMPORARY STAY OF DEPORTATION

LIMITATION ON DETENTION AND DEPORTATION

SEC. 301. (a) **LIMITATION.**—(1) Except as provided in paragraph (2), the Attorney General shall not detain or deport (to El Salvador or Nicaragua, as the case may be) aliens described in subsection (b) during the period beginning on the date of enactment of this Act and ending two hundred and seventy days of continuous session of Congress after the date of transmittal of the report of the Comptroller General of the United States to the Speaker of the House of Representatives under section 102.

(2) Paragraph (1) shall not be construed to prohibit the brief interrogation of an alien under section 287(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1357(a)(1)) for the purpose of determining whether this section applies to particular aliens.

(b) **SALVADORANS AND NICARAGUANS COVERED BY THE LIMITATION.**—The nationals referred to in subsection (a)(1) are aliens who—

(1) are nationals of El Salvador or Nicaragua,

(2) have been and are continuously present in the United States since before January 1, 1989, and

(3) are determined to be deportable only under—

(A) paragraph (1) of section 241(a) of the Immigration and Nationality Act (8 U.S.C. 1251(a)), but only as such paragraph relates to a ground for exclusion described in paragraph (14), (15), (20), (21), (25), or (32) of section 212(a) of such Act (8 U.S.C. 1182(a)), or

(B) under paragraph (2), (9), or (10) of section 241(a) of such Act (8 U.S.C. 1254(a)).

(c) **REGISTRATION.**—Each individual described in paragraphs (1), (2), and (3) of subsection (b) shall register with the Attorney General anytime beginning thirty days after the date of enactment of this Act and ending ninety days after such date, as a person to whom this Act applies. Upon registering, an individual shall be granted employment authorization and shall be provided with an appropriate document which shall note on its face that the individual's employment authorization terminates at the end of the suspension of deportation period established under subsection (a) and shall indicate such date.

(d) No person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or public opinion may obtain the benefit described in subsection (a).

(e) No person may receive a benefit described in this section if such person does not apply for such benefit during the period which begins 30 days after the date of enactment of this Act and ends 90 days thereafter.

(f) **APPLICATION FEES.**—

(1) The Attorney General shall provide for a schedule of reasonable fees to be charged for the opportunity to register under subsection (c).

(2) The Attorney General shall deposit payments received under this subsection in a separate account and amounts in such account shall be available, without fiscal year limitation—

(A) to cover administrative and other expenses incurred in insuring that persons registering under subsection (c) in fact meet the requirements of subsection (b), and

(B) to enhance the border patrol, investigations, and other appropriate enforcement activities of the Immigration and Naturalization Service."

(g) **EXCEPTION.**—The provisions of subsection (a) shall not apply to any person described in subsection (b), if such person was physically present in his or her country of nationality on or after January 1, 1989.

This subsection does not prohibit the Attorney General from granting advance parole to any person described in subsection (b).

PERIOD OF STAY OF DEPORTATION NOT COUNTED TOWARD OBTAINING SUSPENSION OF
DEPORTATION BENEFIT

SEC. 302. With respect to an alien whose deportation is temporarily stayed under section 301 during a period, the period of stay shall not be counted as a period of physical presence in the United States for purpose of section 244(a) of the Immigration and Nationality Act (8 U.S.C. 1254(a)), unless the Attorney General determines that extreme hardship exists.

TITLE IV—MISCELLANEOUS PROVISIONS

ALIEN'S STATUS DURING PERIOD OF EXTENSION

SEC. 401. During the period in which an alien's deportation is temporarily stayed under section 301, the alien—

- (1) shall not be considered to be premanently residing in the United States under color of law,
- (2) shall not be eligible for any program of public assistance furnished (directly or through reimbursement) under Federal law, and
- (3) may be deemed ineligible for public assistance by a State (as defined in section 101(a)(36) of the Immigration and Nationality Act) or any political subdivision thereof which furnishes such assistance.

I. PURPOSE

The purpose of S. 458 is to temporarily suspend the deportation of nationals of El Salvador and Nicaragua in the United States pending a General Accounting Office study of conditions in those countries and of displaced nationals of those countries.

The GAO is directed to investigate and report to the Congress concerning the living conditions, security, health and nutrition conditions, and availability of assistance for Salvadorans and Nicaraguans displaced inside and outside their countries. The GAO is further directed to study the general conditions and circumstances in El Salvador and Nicaragua faced by those nationals required to depart the United States. In particular, the GAO will determine the reliability and use of reports of violence to fundamentals human rights, and reports concerning the status of Salvadorans who have returned from the United States, and make recommendations for improving the information provided by such reports.

The bill provides for the appropriate committees of each House to hold hearings to consider appropriate U.S. steps to assure the personal safety and equitable distribution of assistance to displaced Salvadorans and Nicaraguans. In addition, the committee shall consider whether it is appropriate to extend, remove, or alter the restrictions described in title III.

II. LEGISLATIVE HISTORY

97th Congress

Beginning in early 1981, as violence in El Salvador significantly escalated, numerous Members of Congress from both houses petitioned the administration to stay temporarily the deportation of Salvadoran nationals through an administrative procedure historically used for such purposes: "extended voluntary departure" (EVD). On April 6, 1981, Senator Kennedy presented the case in letters to then-Secretary of State Alexander M. Haig, Jr., and to the Immigration and Naturalization Service, stating to Secretary Haig that "I believe we must be vigilant that we are not unneces-

sarily endangering the lives of Salvadorans who understandably do not want to return to their country at this time."

However, this request, as well all subsequent requests from the Congress, were either ignored or denied.

98th Congress

On May 26, 1983, Senator DeConcini introduced S. Res. 156, expressing the sense of the Senate that extended voluntary departure status should be granted to Salvadorans in the United States whose safety would be endangered if they were required to return to El Salvador. The bill was referred to the Immigration Subcommittee of the Senate Judiciary Committee where no action was taken.

A similar sense of the Congress resolution was included in the fiscal year 1984 Department of State Authorization, which was passed by the Congress in 1983 and enacted into law (Public Law 98-164). Although the President signed the bill containing the resolution, the administration failed to grant EVD to Salvadorans.

Finally, on November 17, 1983, at the end of the 98th Congress, Senator DeConcini introduced S. 2131 to suspend the deportation of Salvadorans from the United States. Although that bill garnered the support of 21 cosponsors in the Senate, the Subcommittee on Immigration and Refugee Policy did not act on it prior to adjournment of the 98th Congress.

99th Congress

On February 5, 1985, Senators DeConcini, Kennedy, Pell, Durenberger, Specter, Boschwitz, and Leahy introduced S. 377. S. 377 was reported by the Immigration Subcommittee to the full Judiciary Committee on September 30, 1985. The bill was cosponsored by 27 members of the Senate, but despite reaching the top of the Judiciary Committee's agenda, was not considered by the committee.

100th Congress

S. 332 was introduced on January 20, 1987, by Senators DeConcini, Levin, Riegle, Dodd, Bradley, Melcher, Hatfield, Specter, Simon, Leahy, Inouye, and Heinz. S. 332, identical to S. 377 as introduced in the 99th Congress, was referred to the Subcommittee on Immigration and Refugee Affairs which favorably reported it on April 10, 1987. At the request of Senator Simpson, the Immigration Subcommittee held a meeting during full committee consideration of the measure. The subcommittee hearing was held on June 18, 1987.

S. 332 was reported favorably by the Judiciary Committee with amendments and subject to technical changes on July 15, 1987. The bill was not considered by the full Senate.

101st Congress

S. 458 was introduced on February 28, 1989, by Senator DeConcini, and cosponsored by 26 other Senators. Hearings were held at the request of Senator Simpson on June 21, 1989. The legislation was considered by the Committee on the Judiciary on September 14, September 18, and October 5, 1989. On November 2, 1989, the committee considered a number of amendments to S. 458. The following amendments were accepted: (1) to reduce the application

period from 180 days to 90 days; (2) to direct the Attorney General to provide a schedule of reasonable application fees; and (3) to exempt from eligibility Salvadoran and Nicaraguan nationals physically present in their respective countries on or after January 1, 1989. The following amendments were rejected: (1) to establish standard profiles for determination of eligibility; (2) to require the Secretary of Health and Human Services to reimburse State and local governments for 100 percent of costs incurred as a result of participation in public assistance programs; and (3) to restrict future congressional action on providing adjustments for permanent residence. After consideration of the amendments, the committee favorably reported the bill by a vote of 11-3.

III. DISCUSSION

Background

An estimated 70,000 innocent civilians have been killed since the onset of the current civil war in El Salvador in 1979. Similarly, reportedly thousands of civilians have fallen victim to indiscriminate violence associated with the civil war in Nicaragua.

The United States has historically provided temporary relief from deportation, known as "extended voluntary departure," for nationals of countries experiencing acute unrest, such as is known to exist in El Salvador and Nicaragua. However, the administration has rejected congressional and other pleas that this tradition be applied also to nationals of El Salvador and Nicaragua. The lack of responsiveness by the administration compels the committee to favorably report S. 458, which proposes a stay of deportation patterned after the historical use of extended voluntary departure.

Extended voluntary departure

Over the past quarter century, the U.S. Attorney General, upon the advice of the Secretary of State, has utilized the device of "extended voluntary departure" to suspend temporarily the deportation of nationals of countries experiencing significant civil unrest or a general breakdown of order. EVD has been applied to some 16 groups over this period, including nationals of Cuba, Czechoslovakia, Chile, Cambodia, Vietnam, Laos, Lebanon, Hungary, Rumania, Uganda, Poland, Afghanistan and Ethiopia. Currently, the Bush administration has granted deferred departure to a wide class of Chinese nationals as a result of civil unrest in that country.

Extended voluntary departure versus asylum

The authority available to the Attorney General to confer EVD is found in the Immigration and Nationality Act (sections 242 and 244). It, like the stay of deportation proposed in S. 458, is distinct from, and complementary to, the Attorney General's obligations under the Refugee Act of 1980 to grant asylum to individuals with a "well-founded fear of persecution" should they be required to depart.

EVD had been granted to groups based upon general conditions in the homeland—not because each individual within the group would be a victim of persecution. Asylum under the Refugee Act, on the other hand, is for individuals—not groups—who are likely

targets of persecution. For example, since 1980, when the Refugee Act was enacted, the Attorney General, upon the recommendation of the Secretary of State, has granted EVD to nationals of Poland, Uganda, Afghanistan, and Ethiopia because of the general civil unrest in those countries. Simultaneously, the Attorney General granted asylum to individuals who might be specifically singled out for persecution if returned.

In 1988, the Immigration and Naturalization Service granted asylum to 2.8 percent of those Salvadoran applications adjudicated, and 53.2 percent of those by Nicaraguans. In the first 10 months of fiscal year 1989, the INS granted asylum to 2.1 percent of Salvadoran applications, and 30.9 percent of those by Nicaraguans. At the same time, deportations or required departures to those countries continued.¹

General conditions in El Salvador

Since 1979, continuous violence and civil war has plagued tiny El Salvador, a country about the size of Massachusetts. Over that time, over 1 million, or at least 20 percent, of the country's 5 million inhabitants have been uprooted by conflict as government forces clash with those of the opposition Farabundo Marti Front for National Liberation (FMLN). In contrast, even at the height of the Vietnam war the number of inhabitants displaced never exceeded 8 percent of the population.²

Estimates of the number of Salvadorans illegally in the United States are in the 500,000 range, though may run as high as 750,000. The U.S. Bureau of the Census notes that most of this migration occurred since the start of the civil war in El Salvador. As the Bureau states:

Salvadorans began fleeing their country en masse in April 1980, as the conflict between government troops and opposition forces escalated after the assassination of Catholic Archbishop Oscar Romero.³

Both the government and the rebels who oppose it have engaged in human rights violations against the citizens of El Salvador. The violence and terrorism is both random and specifically directed. The terror against specific individuals by so-called rightwing "death squads" is well known. While the activities of the death squads have declined significantly since the early 1980's, they remain unacceptably high and have in fact escalated since 1987.⁴ But even more significant to the need for a temporary stay of deportation is that over 62,000 innocent civilians have been killed by onslaughts associated with the ongoing civil war. While such violence has abated since the early stages of the civil war, recent data

¹ INS defines "required departure" as "the directed departure of an alien from the United States without an order of deportation. The departure may be voluntary or involuntary . . . and may or may not have been preceded by a hearing before an Immigration Judge."

² See "Refugee Problems in Central America," Staff Report prepared for the use of the Subcommittee on Immigration and Refugee Policy, Committee on the Judiciary, U.S. Senate, September 1983, S. Rpt. 98-139.

³ Statement by Linda Peterson, Bureau of the Census, before the House Subcommittee on Census and Population, June 27, 1985.

⁴ CRS Report for Congress, "El Salvador, 1979-1989: A Briefing Book on U.S. Aid and the Situation in El Salvador," Apr. 28, 1989, at 88-89.

indicate that it is once again on the rise. Americas Watch, a New York-based human rights organization, reports that in 1988 there were 60 death squad killings, 85 indiscriminate killings by the army, 45 civilian victims of mines and explosives (the majority of which are blamed on the FMLN guerrillas), and 41 targeted assassinations by the FMLN. Between January 1989 and June 13, 1989, Americas Watch reports 39 civilians killed by government forces, 17 by death squads, and 56 by the guerrillas. The inauguration of President Alfredo Cristiani in June 1989, and the ensuing negotiations between the government and the FMLN, is a hopeful sign that peace with democracy may be returned to El Salvador. However, the level of violence has recently increased. Both sides in the struggle wish to negotiate from positions of strength. The Nongovernmental Human Rights Commission in El Salvador reports that in the first 3 months of Cristiani's ARENA government, 317 civilians were killed and 65 disappeared. Even more ominous are the increasing arbitrary captures and torture, which the Commission reports at 447 for the months of June through August, 1989.

The escalating violence demonstrates that EVD is necessary for the protection of Salvadoran citizens currently residing in the United States. Within the past 6 months, there has been documented activity in 13 or 14 departments (provinces) within El Salvador, indicating that there are no truly safe zones to which Salvadorans may return. The need to grant temporary status to refugees while peace is returned to the region is recognized by the democratically elected government of El Salvador. The Ambassador of El Salvador, writing on behalf of President Cristiani in a September 27, 1989, letter, states that "enactment of this humanitarian legislation is essential to achieve peace with democracy in El Salvador." This is also the view held by ex-President Napoleon Duarte, who wrote in support of the bill in 1988.

The committee received testimony on June 18, 1987, from Americas Watch on the status of human rights in El Salvador. Mr. Aryeh Neier, Americas Watch vice-chairman, summarized:

The most important features of the human rights situation in El Salvador are: (1) the country is at war and non-combatants are victimized by both the armed forces and the guerrillas; (2) the object of both sides in the war is to control the civilian population. Many of those they cannot control are deliberately driven from their homes to create free fire zones or to deny their opponents a civilian base of support. This has created a vast population of internally displaced persons and external refugees who cannot safely return to their homes and livelihoods; and (3) the Salvadoran judicial system is subservient to the armed forces and is demonstrably incapable of offering Salvadoran citizens legal recourse or protection from abuses of human rights.

There has been some effort by the Department of State to track the fate of Salvadorans who have been returned to El Salvador over the past few years. Amnesty International in 1987 documented 22 cases of refugees who returned, only to be subjected to persecution. As the situation worsens in El Salvador, it is unreasonable

to assume that such persecution will not continue. Only by allowing the GAO to perform a study of the current conditions in El Salvador can the U.S. Government be assured that refugees may return to conditions under which their country can be re-built with democracy, rather than torn by war.

Recent events in El Salvador: The November 1989 offensive

On November 11, 1989, the FMLN launched its largest offensive in the history of El Salvador's ongoing civil war. In a week of intensive fighting in the capitol of San Salvador, an estimated 1,000 civilians were killed, many more wounded, and large areas of the city decimated. Numerous human rights violations were perpetrated by both sides in the conflict. At the height of the fighting, government forces strafed and bombed large civilian areas surrounding the capitol city. And, in one of the most heinous acts since the heyday of the rightwing death squad activity in the early 1980's, six Jesuit priests and two of their employees were brutally murdered, execution style, at their residence.

While the bulk of the fighting was concentrated in San Salvador, additional conflicts were reported in eight of El Salvador's fourteen departments. On November 12, 1989, President Cristiani declared a state of emergency. The government suspended the rights of freedom of expression, freedom of movement, freedom of association, and inviolability of correspondence. Due process guarantees were suspended for detainees, and security forces were authorized to hold prisoners incommunicado for 15 days before charging them with a crime and bringing them to a judge.⁵

On November 14, 1989, the government imposed a 24-hour curfew on seven of San Salvador's neighborhoods, affecting some 400,000 residents of the capitol. The army was instructed to shoot curfew violators on sight. After the curfew was imposed, the army continued to bomb and strafe residential areas where the rebels were entrenched.⁶ The civilian population was effectively trapped between the government and the rebel forces. Despite pleas from the International Committee of the Red Cross (ICRC), neither side would agree to a truce so that the wounded could be evacuated.

On November 17, 1989, the FMLN began to withdraw from occupied neighborhoods in San Salvador, but fighting remained heavy in other provincial capitals. San Salvador residents are returning to their homes, but the casualty figures are staggering. In addition to the estimated 1,000 civilian deaths, San Salvador's main hospital alone reported 1,627 wounded between November 11 and November 16, 1989. Up to 50,000 civilians were displaced during the offensive, some of them for the second or third time. The targeted killings of the six Jesuit priests is indicative of a continuing and increasing trend of harassment of church officials. Americas Watch received testimony of foreigners being beaten and tortured by security forces during the FMLN offensive, several of them Americans.⁷ Be-

⁵ Americas Watch Report, "Carnage Again: Preliminary Report on Violations of War by Both Sides in the November 1989 Offensive in El Salvador" (November 1989).

⁶ Gruson, L., "Salvadoran Army Steps up Raids on Strongholds of Rebel forces," N.Y. Times, Nov. 15, 1989.

⁷ Americas Watch Report, "Carnage Again" (November 1989).

cause foreigners generally receive better treatment, these reports raise grave concerns for the safety of Salvadoran nationals taken into custody. Many church officials and other relief workers have been arrested, threatened, or intimidated by the police. In sum, the government has seized on the state of emergency to engage in severe human rights violations.

Perhaps the most ominous sign of repression in El Salvador is the legislative assembly's reconsideration of "antiterrorist" legislation, reintroduced on November 23, 1989. Under the proposed law, free speech and criticism of the government would be severely curtailed. Any speech or communication "subverting the public order," a vague and overbroad phrase, would be punishable by jail terms of up to 10 years.⁸ Similarly, human rights reporting to international organizations, "motivated to intervene in the internal affairs of El Salvador," would be punishable by 5- to 10-year prison sentences. Finally, the press could be held liable for "subverting the public order" by publishing propaganda viewed unfavorably by the government. The proposed legislation would be applicable whether or not a state of emergency exists.

The recent offensive is perhaps the most devastating attack yet committed by the FMLN. The toll in civilian lives was tragic, as was the toll in injuries and damage to property. Refugees displaced again, unable to find any safe haven within the country. The government's response to the offensive, repression and suspension of liberties, is indicative of future trends in El Salvador. The struggle for peace with democracy is far from over. In light of these events, it seems unconscionable for the United States to condone deportation of Salvadoran nationals from this country to war-torn El Salvador. The tragic loss of civilian lives in the recent offensive is conclusive proof that there is not yet safe haven to be found within that country's borders. The United States has a humanitarian and moral duty to extend temporary protected status to Salvadoran nationals currently residing in this country.

General conditions in Nicaragua

As with El Salvador, the general security of the civilian population in Nicaragua is placed at risk by ongoing civil war. It is currently estimated that as many as 100,000 Nicaraguans are in the United States illegally, having left Nicaragua over the course of the conflict in that country.

The current civil war in Nicaragua began in July 1979, with the fall of the Somoza government and the subsequent rise to power of the Sandinista National Liberation Front (FSLN). Shortly after seizing power, FSLN leader Daniel Ortega delayed elections and instituted a totalitarian regime. Anti-Sandinista guerrillas (contras), with financial support from the United States, have led the opposition against the Sandinista regime. State Department and other reports indicate that as many as 29,000 civilians have been killed as a result of the conflict.

In 1983, several Latin American countries organized the "Contadora Group" in an effort to mediate the hostilities in Central

⁸ Id.

America, particularly Nicaragua. Their efforts faltered in the mid-1980's as fighting escalated. However, in August 1987, the Central American Peace Agreement ("Esquipulas II") was signed, resulting in a temporary truce between the contras and the government. On April 1, 1988, a cease-fire was initiated.

During the term of the cease-fire, fighting abated. But both the contras and the government continue to conduct "targeted executions." 1,700 political prisoners continue to be held by the government. Despite the cease-fire and withdrawal of troops from war zones, killings and "disappearances" of civilians persist. Americas Watch reports that between 1987 and 1989, it presented the Nicaraguan government with information on 89 killings or disappearances.

Although conditions in Nicaragua appear to be improving as a result of the 1987 peace agreement, the country remains highly volatile. On October 27, 1989, President Daniel Ortega announced that the cease-fire, which had been in effect for 19 months, would be suspended. On October 30, 1989, a contra attack in a remote province killed 4 civilians and wounded five others. The government responded by announcing on November 1, 1989, that military operations against the contras would resume.

Given the current political situation in Nicaragua, and the impending escalation of violence, it is necessary to grant EVD to Nicaraguan nationals. To force them to return to their country at this point would be an unconscionable decision. The Sandinista government has scheduled democratic elections for February 25, 1990, but the outcome is uncertain. The United States should take a cautious approach toward the Sandinista assurances of peace and democracy. Certainly, such an approach must include granting EVD to Nicaraguans presently in this country until the situation in Nicaragua stabilizes.

IV. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 9, 1989.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 458, a bill to provide for a General Accounting Office investigation and report on conditions of displaced Salvadorans and Nicaraguans, to provide certain rules of the House of Representatives and of the Senate with respect to review of the report, to provide for the temporary stay of detention and deportation of certain Salvadorans and Nicaraguans, and for other purposes. The bill was ordered reported by the Senate Committee on the Judiciary, November 2, 1989.

CBO estimates that S. 458 would result in net costs of less than \$1 million to the federal government, but would result in costs of \$130 million to \$260 million to state and local governments over the 1990-1992 period.

S. 458 would:

Require the General Accounting Office (GAO) to investigate and report on the conditions of displaced Salvadorans and Nicaraguans; the GAO investigation would begin within 60 days of enactment, and the report would be due no later than one year after the study begins;

Provide for the temporary stay of detention and deportation of certain Salvadorans and Nicaraguans for a period beginning on the date of enactment and ending 270 days of continuous session of the Congress after the GAO transmits its report;

Require all Salvadorans and Nicaraguans to whom the bill would apply to register with the Immigration and Naturalization Service (INS) in order to be eligible for the temporary protected status; and

Require the Attorney General to provide for a schedule of reasonable fees to be charged for the opportunity to register with the INS; such fees would be available to the Attorney General to cover the administrative costs associated with such registration, as well as to enhance enforcement activities of the INS.

In general, these nationals would be ineligible for federal public assistance but could receive state and local public assistance.

Based on information provided by the GAO, CBO estimates that the investigation and report would cost between \$500,000 and \$750,000, largely in fiscal year 1990, but would not be likely to affect total agency spending. Even though, under this bill, most Salvadoran and Nicaraguan nationals could not be detained or deported during the specified period, there would be little or no cost savings because there is a backlog of other categories of aliens to be detained or deported.

As noted above, S. 458 would require the Attorney General to provide for a schedule of reasonable fees that may be used to cover the administrative costs associated with the registration and to enhance enforcement activities of the INS. We expect that the administrative cost per applicant would be roughly \$50. If the fee were set at this amount, both recipients and spending would be \$15 million to \$30 million in fiscal year 1990. The bill would not limit the amount of the fee, and it could be set higher. If so, the additional receipts would be available for spending on enforcement activities. (However, the larger the fee, the fewer are likely to register with the INS.)

Under current law, most unauthorized Salvadorans and Nicaraguans are unlikely to be deported in the next few years, and many would receive some benefits, such as education, from states and localities during this period. However, their unauthorized status would make them less likely to apply for state and local general assistance programs that provide both case payments and medical coverage to low-income families and individuals. Thus, by prohibiting their detention and deportation, S. 458 would result in increased participation in public assistance programs, and thus additional costs to state and local governments. CBO estimates that increased costs to states and localities for public assistance would be between \$35 million and \$70 million for fiscal year 1990, between \$75 million and \$150 million for fiscal year 1991, and between \$20 million and \$40 million for fiscal year 1992.

CBO's estimate assumes that there are currently between 500,000 and 1 million Salvadoran and Nicaraguan nationals to whom the bill would apply. We estimate that 60 percent would register with the INS and would therefore be granted a stay of detention and deportation for a period of approximately two years, as specified in the bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mitchell Rosenfeld and Michael Sieverts, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

V. REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b), rule XXVI of the Standing Rules of the Senate, the committee has concluded that the bill will have no regulatory impact.

VI. VOTE OF THE COMMITTEE

The Committee on the Judiciary, on November 2, 1989, in open session and with a quorum present, favorably reported bill S. 458, as amended, to the full Senate by a recorded vote of 11-3.

VII. MINORITY VIEWS OF SENATOR ALAN K. SIMPSON

There are three primary reasons for my continued opposition to this bill to suspend the deportation of all Salvadorans and Nicaraguans present in the United States in an illegal immigration status: (1) It undercuts the Refugee Act of 1980, (2) it is harmful to United States immigration policy and would promote illegal immigration, and (3) conditions in El Salvador and Nicaragua do not warrant the extremely broad relief that it grants.

My opposition to this legislation should not be misinterpreted as any lack of compassion toward El Salvador or Nicaragua: I strongly support all efforts to make those countries more safe and democratic. For example, I have consistently supported economic and military aid to El Salvador. I believe such aid is necessary to foil the Guerrilla insurgency in that country, to encourage the proper and professional conduct of the Salvadoran military, and to promote other democratic reforms. We have seen much progress in El Salvador in recent years, but legislation like this does not add to this progress, and I feel it would also have many adverse immigration consequences in the United States.

I. UNDERCUTTING REFUGEE ACT OF 1980

The Attorney General may presently grant political asylum to anyone in this country who establishes a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion. (Section 208 of the Immigration and Nationality Act (INA).) The United States is also bound by law and international treaty to withhold the deportation of any person whose "life or freedom" would be jeopardized, on those same grounds, if that person were returned to his homeland. (INA Sec. 243(h).) This standard is adopted from the United Nations convention and protocol relating to the status of refugees, and many members of this committee—Democrat and Republican alike—played a key role in ensuring that this standard became U.S. law through passage of the Refugee Act of 1980.

The Refugee act specifically provided for a "case by case" review of every claim for refugee status, and it sought to end the "country-specific" standards we had employed in the past. Before 1980, only those applicants for asylum from communist countries or the Middle East would qualify. I supported this rational and equitable change in our refugee laws, and so did all others who were present at the time: the Refugee act originally passed the Senate by a vote of 85-0

Violation of Refugee Act by S. 458

Unfortunately, S. 458 specifically and disturbingly employs two of the main approaches that the Refugee Act sought to end: (1) A

blanket approach instead of a "case by case approach" (everyone from a particular country qualifies), and (2) country specificity (El Salvador and Nicaragua are specifically named). The blanket approach is inadvisable because it grants refugee status to anyone from a particular country—regardless of the merits of the claim to persecution. Given the American public's stated concerns with overly high levels of immigration, we should select carefully those to whom we give immigration benefits. The blanket approach is the least selective process possible.

The country-specific approach is improper because it injects foreign policy considerations and domestic interest-group pressures into a process that should be almost pristine in its neutrality: The determination of who qualifies as an immigrant or refugee under our laws. It is much wiser to have a fair standard that applies to all countries than to have an overly generous standard that applies to just a few countries.

The supporters of this legislation argue that it will not grant a true "refugee status," and thus the Refugee Act is not a proper analogy. I disagree, because the American public does not distinguish between "refugee" or "suspended deportee," it only knows that "too many aliens are here"—according to what the latest public opinion polls tell us. Thus, the preception that we have accepted hundreds of thousands of people from El Salvador who are fleeing "turmoil and insecurity" will undercut public support when we next use the Refugee Act to respond to a real refugee emergency. This point should not be taken lightly. We have twice seen refugee "emergencies" in the last 15 years: the evacuation of Siagon and the flight of the "Boat people" from 1975-79, and the "mariel exodus" of 1980. We responded with great generosity during those crises, yet I feel our will to respond to future refugee emergencies may be diminished if this legislation were enacted.

There is simply too much illegal immigration pressure in the Western Hemisphere for us to admit people claiming a refugee or quasi-refugee status on anything other than a case-by-case basis. The suspension of deportation legislation would have the illogical effect of granting a legal status and work authority in the United States to any person from El Salvador or Nicaragua—even if they do not qualify for political asylum and have no fear of returning to their homeland.

GAO Findings

The General Accounting Office (GAO) issued a study (January 1987) which found that there were no clear "uniform standards" for judging asylum applications—but it did not conclude that Salvadoran asylum applications were treated in an unfair manner. All of the asylum cases that it surveyed were before either an INS district Director or the Executive office for immigration review. Each of these asylum cases may be subsequently reviewed in their proper Federal circuit court of appeals. To date, there has been no "pattern of reversal" at the Federal court level of the denied Salvadoran applications. I believe the Federal courts—not the GAO—are the authority on fairness in asylum applications, and so far, there is no indication that they find the political asylum process biased against Salvadorans or any other specific nationality group.

Finally, the GAO found that, of those asylum applications denied, only two percent of the cases were placed in deportation proceedings. In fact, the GAO recommended that more denied applicants be deported. It would appear that the rhetoric about our large-scale deportation of Salvadorans is simply that: rhetoric.

II. HARM TO U.S. IMMIGRATION AND REFUGEE POLICY

"Temporary" status a fallacy

"Temporary" refugee status in the United States is a misnomer. We deport very few of those whom we apprehend or deny asylum to—as I noted above—and the courts tend to recognize the "equities" that these people establish once the Government officially sanctions their presence, even if only for a brief period of time. There is firm and ample evidence of this pressure for "temporary" policies of EVD to become permanent: And amendment was added to the foreign assistance authorization bill and the Commerce/Justice/State appropriations bill for fiscal year 1988 which granted amnesty to nationals of those countries who had enjoyed EVD prior to July of 1984. (EVD is the administrative equivalent of the relief that this legislation provides.) That amendment prevailed in Congress, and the "temporarily" protected nationals of Uganda, Poland, Ethiopia, and Afghanistan were in fact made "permanent."

The sponsors of this legislation claim that their intent is temporary, yet they voted against my amendment in committee which would have provided protection against attempts to make the class of illegal aliens covered by this bill permanent. I believe this tactic shows the "true colors" of some in the "Central American refugee" movement. An implicit goal of some in this movement is to give a broad, permanent amnesty to all Central American illegal aliens in the United States. I strongly disagree with this goal.

Economic motives

We, in Congress, must not forget that there is also a very logical motivation to immigrate in the case of individuals who receive this status: Work at United States wage levels is extremely attractive to people from Latin America. Even if many originally intended to return home someday, they often are convinced to stay by the benefits of participation in the United States economy. This does not make them greedy or unworthy people, but it surely does fail to demonstrate that they are "refugees" or even "quasi-refugees."

Recent passage of the Immigration Reform and Control Act made clear Congress's commitment to control illegal immigration. However, this legislation would directly undermine that new law. It is inevitable that increased illegal immigration from Nicaragua and El Salvador would occur should this bill be enacted, as the following example shows: A poll taken during the 1984 Salvadoran presidential elections by the Spanish international network (formerly "SIN," now "univision") found that 67 percent of all Salvadorans polled would like to migrate to the United States if they could find work here. S. 458 does state that only those Salvadorans and Nicaraguans present in the United States before January 1, 1989, would qualify. Nonetheless, it is most likely that a large number of illegal immigrants from these countries would migrate north in any event,

in an attempt to secure the status. Even if they do not receive the status, they would be here, they would be enticed to stay by our economy, and we are unlikely to detect and deport more than a small portion of these new illegal entrants. This is a result that the American public clearly would not accept.

Generous United States policy

The United States presently embraces for permanent resettlement more refugees than the rest of the world combined. This is a fair and generous policy of which I am very proud and supportive. We also accept more immigrants than the rest of the world combined, and El Salvador sends its share: over 8,000 per year as permanent immigrants, over 18,000 per year as nonimmigrants. However, I fear that public support for these policies will weaken if we grant some quasi-refugee status to 500,000 or more Salvadorans—many of whom do not deserve the status—and then most of them stay on to become “permanent”.

Finally, we must recall that the 1986 immigration law granted legal status to all persons present in this country in an illegal status since January 1, 1982, or before. This remarkable act of grace would grant benefits to those Salvadorans who fled during the worst years of the violence in their country—1980 and 1981. Over 100,000 Salvadorans took advantage of this program. It is true that the legalization program did not provide benefits to everyone here illegally from El Salvador or Nicaragua, but neither did it provide such benefits to all persons from any other country in the world. Once again, if we pass this bill we undercut U.S. immigration policy by treating the nationals of specific nations more generously than those from the rest of the world.

III. CONDITIONS IN EL SALVADOR

Human rights statistics

Human rights conditions in El Salvador have improved significantly in the last 5 years. According to press reports, there were over 9,000 civilian deaths due to the conflict in 1981. By 1984 civilian deaths due to random violence had decreased to 800, in 1985 they decreased further to 335, in 1986 they fell to 261, and in 1987 they fell to 184. There was an increase to approximately 240 in 1988, but that rate has since dropped significantly during the first 7 months of 1989 (11 per month, or, if this rate continues, approximately 130 for the year). Thus, since the advent of the present Cristiani/Arena Government in El Salvador, the civilian casualty rate has been at its lowest level ever.

Homicide rate in United States cities

In comparison, 1896 persons were murdered or otherwise violently killed in New York City in 1988, and there have been over 370 homicides in the District of Columbia during the first 10 months of 1989. The population of New York is somewhat larger than El Salvador (8 million compared to 5 million), and the population of Washington, DC, is significantly smaller than El Salvador (800,000 to 5 million). To measure the death rate per capita, it would be: Washington (assuming no more homicides for the rest of 1989), 1

per 2,162; New York, 1 per 4,210; and El Salvador (using the higher 1988 figure), 1 per 20,833. Thus, the likelihood of violent death is 5 to 10 times higher in New York and Washington than in El Salvador.

Any number of deaths is regrettable, but we should not fail to note the significant downward trend in El Salvador's death rate, the much higher homicide rates in New York and Washington, DC—and this legislation's increasing lack of justification on human rights grounds.

Studies on conditions

No studies have shown that Salvadorans returned from the United States face random violence of such a level that their lives are endangered. A now discredited study by the ACLU purported to show such evidence, yet it found "possible" human rights violations in less than 1 percent of the cases that were reviewed. Because of the extraordinary suspension of U.S. immigration laws that this legislation proposes, I believe that the burden is on the proponents to prove the "unsafe" conditions in El Salvador for returnees. To this point they simply have not proved it. I firmly believe that they are unable to prove it because such a condition does not exist.

"Numbers game"

I take strong issue with the assertion in the majority report that "an estimated 70,000 innocent civilians have been killed since the onset of the current civil war in El Salvador in 1979." On what facts or studies is this figure based? The assertion is not supported.

In hearings before the House Immigration Subcommittee on April 12, 1984, Congressman Moakley (House cosponsor of the bill) mentioned "more than 38,000 murders of civilian, noncombatants, by Government forces." At hearings before the same subcommittee on November 7, 1985, Congressman Moakley testified that "over 50,000" civilians had fallen victim to the civil conflict. Now, in January of 1990, that number has been increased by proponents of the bill to 70,000. Therefore, to believe these figures, in the last 5 years and 9 months there have been 32,000 civilian casualties in El Salvador. No studies would support this conclusion. In fact, even Tutela Legal—a church-sponsored human rights organization that has been much criticized for its over-reporting of "civilian casualties"—does not provide statistics that would even come close to supporting the allegation of 32,000 deaths since 1984, or 70,000 deaths since the conflict began. The figures based on press-reported deaths would indicate approximately 2,000—not 32,000—civilian deaths during this 5-year nine-month period (and I emphasize again that New York City experienced 1896 violent deaths in 1 year). I emphatically note the lack of justification for these numbers. There is a "numbers game" going on here—but I refuse to play it.

While some provinces in El Salvador with heavy guerrilla concentrations do experience significant violence, there are displaced person camps in relatively conflict-free areas of El Salvador which can accommodate these people. Correspondingly, the United States has contributed significant amounts of money each year to these

camps to improve living conditions. There are also camps available in Honduras to those Saldavorans who prefer to leave the country, and these camps are administered by the United Nations. Most important, however, is a finding by the GAO that only 25 percent of those Salvadorans returning to El Salvador were headed to the more conflictive provinces in the country.

General refugee standards

In general, there are three internationally recognized options for dealing with refugee situations, in the following order: (1) Voluntary repatriation, (2) resettlement within the region (in this case, Central America), or (3) third country resettlement (the United States). If we were to assume that all Salvadorans and Nicaraguans are refugees (with which I obviously disagree), this legislation still subverts these well-recognized priorities by immediately moving to the third option without seriously attempting the first two.

ICM study

Between December of 1984 and December of 1986, returned Salvadorans were met at the San Salvador airport by the Intergovernmental Committee on Migration (ICM), a respected international organization, and were screened with regard to their need for food, clothing, shelter, need for travel documents, and possible need for referral to a displaced persons camp. During that time, ICM screened over 9,500 returning persons, reestablished contact with 82 percent through either a returned questionnaire or a field visit, and found that nine returnees had died. Of the nine dead, one was killed in the cross fire between guerrillas and the army, two committed suicide, one drowned, two died from natural causes, one died while robbing a store, one died in a barroom dispute over a soccer match, and one died from unknown causes after returning to the United States. This is hardly evidence of either targeted or random violence sufficient to justify our granting a legal status to over 500,000 people who are in the United States illegally. If anything, this is persuasive evidence that the human rights conditions in El Salvador have improved significantly since President Duarte took office in 1984.

Since the release of these figures, the GAO has reported that ICM's study is less than infallible. This same GAO study also stated there are "weaknesses inherent in the data collection methodologies of human rights monitoring organizations" as well. I would not disagree with either assertion, but I would add that ICM has the best information available, and that the proponents of this legislation have not come up with contrary evidence that is half as convincing. Again, I remind my colleagues that the burden of proof is on the proponents of this blanket suspension of our immigration laws.

The GAO findings only prove that a scientifically unchallengeable study is probably impossible in most countries—or even in New York City—and that the GAO will not be able to do much better with the study that this bill requires. Nonetheless, we must recognize that all groups interviewed—ICM, the State Department, religious and human rights groups—admit that the deaths due to

random violence are down significantly since the early 1980's. The GAO study also supports this trend.

Voluntary returns by Salvadorans

It is also a myth that Salvadorans will not return voluntarily to their own country. TACA, the Salvadoran airline, has 22 flights each week from the United States to San Salvador. These flights are almost always full, and more than 10,000 people per month are on board these flights back to El Salvador. While not every one of these passengers is a Salvadoran, the large majority are, and the large majority are returning voluntarily: 10,000 people return per month on TACA—and the United States returns only about 400 Salvadorans per month who were detected by the INS. Certainly most Salvadorans in the United States feel that it is safe to return to their homeland.

In 1987, a group of approximately 4500 Salvadorans living in United Nations refugee camps in Mesa Grande, Honduras, decided to voluntarily return to El Salvador. This voluntary repatriation is of particular importance, because most Central American experts agree that this camp has a significant population of "guerrillia supporters." If Salvadorans who are identified with the insurgency feel it is safe enough to return to their homeland, then it is clear that the claims of improved country conditions are not just accepted by opponents of this bill, but by the Salvadoran people as well.

In late October of 1989, approximately 1500 Salvadoran refugees in the United Nations camp of Colomoncagua, Honduras returned voluntarily to El Salvador. They returned with the assistance and cooperation of the Salvadoran Government. Again, this proves that Salvadorans will return home voluntarily, thus destroying the myth that Salvadorans are "too afraid to go home."

Economic motives of Salvadorans

Salvadorans are an incredibly industrious, hardworking people. Their rapid undocumented migration and assimilation into Honduras was the main cause for the 1969 "soccer war," and Salvadorans have been the second most commonly apprehended illegal entrant on our southern border—after Mexicans—since the early 1970's; i.e., before the conflict in El Salvador escalated. We must not bury our heads in the sand with regard to the historically economic motive that Salvadorans have shown for migration to the United States. Former President Duarte proved this point clearly when he asked in 1987 that Salvadorans be exempted from employer sanctions because of lack of work in El Salvador and his country's need for the remittances that Salvadorans send home. Despite our sympathy and support for the Salvadoran President and his countrymen, we must not distort our refugee laws by admitting economic migrants under their rubric. There are countless millions of people in the world who would like to justify their economic motives for migration by claiming refugee status, but our refugee program would collapse if we accepted such arguments.

Clearly, most Salvadorans left their country for economic reasons, have few security fears, and may return to relatively stable parts of the country—yet this bill would give them a refugee-like benefit anyway. There is a wealth of information that proves that

conditions in El Salvador simply do not warrant a blanket suspension of the deportation of Salvadoran nationals who are present in the United States in an illegal immigration status. There is little evidence to the contrary—as the majority views prove.

Recent events in El Salvador

The intensified rebel offensive that began in November 1989, and the Salvadoran Government's response to it, may not be dismissed when considering the merits of this legislation. Nonetheless, I am still not persuaded that the increased level of violence (which has since subsided) justifies the granting of a special immigration status to every single illegal Salvadoran present in the United States, no matter what his or her reason for coming here.

An appropriate response to this increased violence would have been for the Judiciary Committee to have accepted by first amendment to S. 458, which would have deleted the blanket suspension of deportation section but required a granting of EVD to any person who "might be subject to adverse treatment upon return to their country of nationality because of their particular associations or individual activities." This clearly would have protected Salvadorans in the United States whose activities are similar to the Jesuit priests who were murdered in one of the most despicable and reprehensible act of the conflict.

In addition, the majority report contains errors and exaggerations concerning the recent rebel offensive. While the majority report claims that "an estimated 1,000 civilians were killed" in the recent offensive, the U.S. embassy estimates that number to be between 200 to 400. While the majority report mentions that a state of emergency was imposed on November 12, 1989, it fail to mention that the assembly modified that degree in January 1990 and now allows public gatherings by political parties, unions, and other organizations. While the majority report describes as "the most ominous sign of repression" a recent consideration of anti-terrorist legislation by the legislative assembly, it fail to mention that President Cristiani vetoed the legislation and sent it back to the assembly because he felt it violated certain individual rights guaranteed by the Salvadoran constitution. United States embassy observers believe that the legislation will not reemerge from the assembly.

The majority report speaks of the recent offensive as if it continues. In fact, most of the rebel troops have left the city of San Salvador, with only "hit squads" directed at high government officials remaining. Again, such targeted persons would either be protected by the Refugee Act of 1980 or by my first committee amendment, and should not be used as justification for a blanket suspension of our immigration laws. In early January, the families of our embassy personnel were returned to El Salvador, because the situation had calmed down significantly.

Finally, it should be noted that some Salvadorans who had previously left for refugee camps in Honduras are once again returning voluntarily to El Salvador. This voluntary return began anew in mid-January of 1990, is being arranged through the cooperation of the governments of Honduras, El Salvador, and the U.N. High Commission on Refugees, and is expected to return 9,000 people to El Salvador by March of 1990. If it is safe for these people to

return today, voluntarily, why do the bill's sponsors believe that they know better—why do they claim that it is not safe for Salvadorans to return from the United States? I disagree with the claim that it is not safe to return, and point out that Salvadoran nationals are doing so voluntarily today—even after the recent rebel offensive.

In short, special immigration status may be extended to those specific groups of people who face particularized risks of mistreatment, and aid may be given to assist average citizens of a country who are displaced by "random violence." However, there is no good justification for a blanket suspension of the deportation of all nationals in the United States in an illegal immigration status.

IV. NICARAGUA

This legislation did not include Nicaraguan nationals until late in 1987. Because the driving force of this legislation has always been El Salvador, I therefore have focused my remarks on El Salvador. However, I have not been presented with convincing evidence either that Nicaraguan nationals deserve blanket refugee status, or that it is a country that should be singled out individually for special attention. Again, the Refugee Act of 1980 provides protection to any Nicaraguan who can demonstrate a "well founded fear of persecution" if returned to that country. In addition, a committee staff report examining the influx of Central Americans in south Texas in 1989 did not find a large percentage of Nicaraguans fleeing their country for identifiable "life threatening" reasons. Therefore, in my view, special treatment outside of present refugee laws is not justified for all illegal aliens from Nicaragua.

V. CONCLUSION

There are a number of alternatives to this broad, unjustified legislation. One suggestion is to institute, on a case-by-case basis, the suspension of the deportation of all nationals of El Salvador and Nicaragua who might face adverse treatment if returned home because of their "particular associations" or "individual activities." This is a much lower standard than that required to prove refugee status, and it would allow us to continue enforcing the law against economic migrants. Unfortunately, the committee rejected this effective, good-faith alternative, one which is very similar to the policy now in effect for nationals of Lebanon.

However, this legislation wants to "have it all," and that is neither wise nor palatable given the present reality of immigration and refugee policy. The United States should never forfeit its right to deport someone who has no legal basis for being in this country and no reasonable claim for fearing to return. I intend to convince my colleagues of the wisdom of this position should the legislation be taken up by the full Senate.